No. 85-1517

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

THE STATE OF COLORADO,

Petitioner,

v.

JOHN LEROY SPRING,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF COLORADO

BRIEF AMICI CURIAE OF THE STATE OF CALIFORNIA AND AMERICANS FOR EFFECTIVE LAW ENFORCEMENT, INC. JOINED BY THE INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, INC., THE LEGAL FOUNDATION OF AMERICA, AND THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION, INC., IN SUPPORT OF THE PETITIONER

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This brief is filed pursuant to Rule 36 of the Supreme Court Rules. The State of California does not need consent to file this brief. Consent to file for other *amici* has been granted by counsel for both parties. Letters of Consent have been filed with the Clerk of this Court.

INTEREST OF AMICI

The STATE OF CALIFORNIA appears by its Attorney General who is the chief law enforcement officer of the State.

Americans for Effective Law Enforcement, Inc. (AELE), as a national not-for-profit citizens organization, is interested in establishing a body of law making the police effort more effective, in a constitutional manner. It seeks to improve the operation of the police function to protect our citizens in their life, liberties and property, within the framework of the various State and Federal Constitutions.

AELE has previously appeared as *amicus curiae* seventy-four times in the Supreme Court of the United States, and thirty-six times in other courts, including the Federal District Courts, the Circuit Courts of Appeal and various state courts, such as the Supreme Courts of California, Illinois, Ohio and Missouri.

The International Association of Chiefs of Police, Inc. (IACP), is the largest organization of police executives and line officers in the world, consisting of more than 14,000 members in 67 nations. Through its programs of training, publications, legislative reform, and *amicus curiae* advocacy, it seeks to make the delivery of vital police services more effective, while at the same time protecting the rights of all our citizens.

The Legal Foundation of America (LFA) is a nonprofit corporation supporting the operations of a public interest law firm. Among other goals, it seeks to preserve a rational criminal justice system, in which adjudications of guilt or innocence are reliable rather than haphazard. The Foundation's attorneys have previously appeared as *amicus curiae* in this Court to urge this view. All litigation undertaken by the Foundation is approved by its Board of Trustees, the majority of whom are attorneys. LFA does not accept private fees and is supported by grants from the public.

The National District Attorneys Association, Inc. (NDAA), is a nonprofit corporation and the sole national organization representing state and local prosecuting attorneys in America. Since its founding in 1950, NDAA's programs of education, training, publication, and *amicus curiae* activity have carried out its guiding purpose of reforming the criminal justice system for the benefit of all of our citizens.

Amici's specific interest in this case arises from our concern that this Court's approval of the decision of the Supreme Court of Colorado would place an intolerable burden upon the police engaged in lawful questioning of suspects of crime, a burden not required by the federal Constitution or *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602 (1966).

ARGUMENT

A VALID WAIVER OF THE RIGHT TO SILENCE AND RIGHT TO COUNSEL DOES NOT REQUIRE THAT THE DEFENDANT BE AWARE, PRIOR TO INTERROGATION, OF ALL POSSIBLE SUBJECTS OF INTERROGATION.

Americans for Effective Law Enforcement has been privileged to file many *amicus curiae* briefs with this Court. In several of them, as in the present one, it has been joined by the *National District Attorneys Association, the International Association of Chiefs of Police,* various other associations of chiefs of police and sheriffs, and the *Legal Foundation of America.* Many of those briefs have often presented an analysis of the relevant case law and offered suggestions to the Court for decisions that would aid rather than unduly hinder effective law enforcement, and without impinging upon basic constitutional protections. In the present brief, we will not undertake an extended analysis of the case law, but will confine our brief essentially to the law enforcement impact of the issues raised by the parties.

The majority of the court below held, *inter alia,* that where the defendant, in custody of federal Bureau of Alcohol, Tobacco and Firearms agents, was given *Miranda* warnings and executed a waiver of rights without being informed that he would be questioned about an unrelated homicide in addition to federal firearms charges for which he had been arrested, there was not a voluntary, knowing and intelligent waiver of *Miranda* rights as to questions regarding the homicide.

The court's ruling overlooks the fundamental *reason* and *purpose* of *Miranda:* to protect a suspect's Fifth Amendment privilege against self-incrimination. That fact was made abundantly clear in this Court's very recent holding in *Moran v. Burbine,* ___ U.S. ___, 106 S.Ct. 1135 (1986), that the police were under no duty to advise a suspect that an attorney

secured by his relatives was available to him prior to interrogation. The Court stated:

> No doubt, the additional information would have been useful to the respondent; perhaps even it might have affected his decision to confess. But we have never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his *self-interest* in deciding whether to speak or stand by his rights. . . . Once it is determined that a suspect's decision not to rely on his rights was uncoerced, that he at all times knew he could stand mute and request a lawyer, and that he was aware of the state's intention to use his statements to secure a conviction, the analysis is complete and the waiver is valid as a matter of law. (emphasis added)

___ U.S. ___, 106 S.Ct. at 1142.

Amici believe that a concern for a defendant's *self-interest* may be what is at the heart of the decision below in *People v. Spring,* 713 P.2d 865 (Colo. 1985). The Colorado court majority may have confused constitutional rights with the broader concept of what is in a suspect's best self-interest; or, perhaps, it had in mind that we should return to a long-since discredited and discarded "sporting theory" of criminal justice. The fallacy of the "sporting theory" of criminal justice—the idea that a criminal suspect, like hunted prey, must have a "fair chance" to escape—has long been exposed by eminent legal scholars such as Wigmore, Pound, and as far back as Bentham. Wigmore, 1A EVIDENCE IN TRIALS AT COMMON LAW, § 57, at 1185 (3d ed. 1940); Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice,* 29 A. B. A. Rep. 395, 404-05 (1906); Bentham, 5 RATIONALE OF JUDICIAL EVIDENCE 238 (1827).

Amici respectfully submit that this Court, having laid to rest "self-interest" as the basis for the *Miranda* rule in *Burbine,* should unhesitatingly reject any notion of a return to a "sporting theory" of criminal justice, however much the defendant and his supporters in the instant case may long for such idyllic days. The investigation of crime by the interrogation process is not a game; it is a serious undertaking and is essential to the

continued existence of society. This is especially so in a case such as the present one in which the defendant was a seasoned veteran in the working of the criminal justice system. He was not a helpless "fox." He was, in fact, more like one of "equals, meeting in battle," an expression used by Fortas in *The Fifth Amendment: Nemo Tenetur Scipsum Prodere*, 25 J. CLEVE. B. A. 91, 98 (1954). For the defendant, unembellished *Miranda* warnings were quite sufficient, even to satisfy his "self-interest."[1]

Amici further urge this Court to consider the absurd practicalities that would result from adoption of the rule laid down by the court below. Suppose, for instance, the police have probable cause to arrest a person for a murder. They also have reasonable suspicion that he has committed seven other murders. He is advised of his *Miranda* rights regarding the murder for which he has been arrested. He waives his rights and makes admissions. Questionning drifts into the subject of a second murder. Must the police stop and repeat the *Miranda* warnings, adding an explicit statement that now a different murder is the focus of their inquiry? When the questionning moves to the third murder, must they do the same? And the same for the fourth, fifth, sixth, seventh and eighth?

[1] *Amici* note that the police in this case gratuitously added the further warning that if Spring decided to answer questions without the assistance of counsel, he had the right to stop the questioning at any time or to stop the questioning until the presence of an attorney could be secured. While the court below conceded that this particular embellishment was not "required" by *Miranda*, it stated, "we commend and encourage" it. *People v. Spring*, 713 P.2d 865, 871, n. 4. *Amici* urge the opposite view. This gratuitous embellishment is not only unnecessary, but encourages the "sporting theory" of criminal justice. *See* Inbau, *Over-Reaction—The Mischief of Miranda v. Arizona*, 18 The Prosecutor 7, 9 (Winter 1985). The embellishment urged by the court below with respect to warning a suspect about other crimes is equally unnecessary and undesirable.

Amici know from our experience and observations that frequently a person may be suspected of several crimes, in addition to the crime for which he has been arrested. Also, as interrogation begins, crimes not even previously suspected by the police may be suggested by the defendant's initial responses. Are the police required to assemble an accurate, exhaustive catalogue of all *possible* crimes they may wish to question the suspect about and present the list to the suspect for his thoughtful consideration? The rule adopted by the court below makes these caricatures entirely possible. It further undermines this Court's attempt to give bright line guidance to the police in criminal justice matters. *See New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860 (1981); *United States v. Ross*, 456 U.S. 798, 102 S.Ct. 2157 (1982).

We submit that the correct analysis of this issue was undertaken by Justice Erickson in his thoughtful and scholarly dissenting opinion in this case. We will not duplicate petitioner's discussion of the cases cited by Justice Erickson, including supporting authorities such as LaFave and Israel, Criminal Procedure 306 (1985). The correct application of the constitutional principles involved in this case are well stated in Justice Erickson's summary:

> Law enforcement officers have no duty under *Miranda* to inform a person in custody of all charges being investigated prior to questioning him. . . . All that *Miranda* requires is that the suspect be advised that he has the right to remain silent, that anything he says can and will be used against him in court, that he has the right to consult with a lawyer and to have the lawyer present during interrogation, and that if he cannot afford a lawyer one will be appointed to represent him.

713 P.2d at 880.

CONCLUSION

The case before this Court is one of many hundreds that have been spawned by *Miranda*. They have consumed enormous time, effort, and expenditure of funds that could have been put to far better use on matters of considerably greater importance within the judicial system.

Not only is it in the best public interest to reject the rule established below in this case, but we recommend, additionally, that at the earliest opportunity this Court should re-examine the *Miranda* mandate as to the justification for its continued existence.

Respectfully submitted,

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